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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,114	07/31/2000	Marc E. Strohwig	7451.0026-00	4983
22852	7590	11/21/2003	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			SHAW, JOSEPH D	
			ART UNIT	PAPER NUMBER
			2141	8

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/629,114

Applicant(s)

STROHWIG ET AL. 

Examiner

Joseph D Shaw

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                      | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u>8</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                             | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4,6,7</u> . | 6) <input type="checkbox"/> Other:   |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10, drawn to restriction, classified in class 709, subclass 237.
  - II. Claim 11-16, drawn to restriction, classified in class 705, subclass 30.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention I, as claimed, relates to the art of data communications and protocols for data communication. The subcombination has separate utility such as business methods for electronic commerce, namely managing audit records and collecting unpaid receipts.

3. During a telephone conversation with Mrs. Linda Thayer on November 12<sup>th</sup>, 2003 a provisional election was made without traverse to prosecute the invention of I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Information Disclosure Statement***

4. The information disclosure statement filed June 12<sup>th</sup>, 2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna et al. (6,587,837) in view of Stevens (TCP/IP Illustrated, Volume 1).

a. As per claims 1, 8, and 9, Spagna teaches a method for delivering electronic content from an online store where a first computer sends a request to a second computer seeking permission to access content (they submit the purchase request to the Electronic Digital Content Store for processing; col. 21, lines 42-44); receiving the request at the second computer system (inherent); determining whether to grant the request (the store interacts with a credit card

clearing organization to receive authorization; col. 21, lines 45-52); sending a status indicator from the second computer system to the first computer system including indication that the request has been granted (a Transaction SC is built when authorized and transmitted to the End User; col. 21, lines 52-59); the first computer system receiving the status indicator and releasing the content to the user (Transaction SC arrives on the End-User which kicks off a Player Application to open Transaction SC; col. 21, lines 60-63); the first computer system sending a first acknowledgement to the second computer system indicating that the content was successfully released to the user (Player Application builds an Order SC and transmits it to the Clearinghouse, the Clearinghouse being part of the Electronic Digital Content Store; col. 22, lines 1-8; col. 14, lines 45-47); the second computer system receiving the first acknowledgment (col. 22, line 9); the second computer system sending a second acknowledgement to the first computer system (the Clearinghouse create a License and transmits it to the End-User; col. 22, lines 17-21); the first computer system receiving the second acknowledgement (col. 22, lines 22-24). Spagna inherently teaches the initiation and termination of an acknowledgement process that detects the second acknowledgement from the second computer system. However, Spagna does not teach the acknowledgement monitoring process sending a third acknowledgement to the second computer system when the second acknowledgement is not received within a predefined time period. Stevens

teaches a transmission protocol that sets a timeout and retransmits data when an acknowledgement is not received before the time out (page 297, paragraph 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of retransmission of data when no acknowledgement is received before a timeout as taught by Stevens in the Spagna invention because this handles the fact that data and acknowledgements get lost on a network as taught by Stevens (page 297, paragraph 1).

b. As per claim 2, Spagna discloses the claimed invention modified by Stevens as described above and furthermore teaches including a first time value (the End User is informed of a download estimate time, giving the user the option to specify when they want to download the Content; col. 21, lines 63-67). Inherently the download time will affect when the first acknowledgement is sent out, changing the measurement of the predefined time period.

c. As per claim 3, Spagna discloses the claimed invention modified by Stevens. Furthermore, Stevens teaches the predefined time period being measured from the start of the acknowledgement monitoring process (a retransmission timer is used when expecting an acknowledgement from the other end; page 297, paragraph 3).

d. As per claim 10, Spagna discloses the claimed invention modified by Stevens. Furthermore it is inherent that the invention is embodied on a computer readable medium (RAM, system memory, ROM).

3. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollaar (5,396,613) in view of Fymier (5,604,487).

e. As per claims 4-7, Hollaar teaches a initiating communication between a first computer system and a second computer system involving a request (Fig. 3A, col. 2, lines 62-63); receiving a signal from a second computer system (col. 2, line 66); initiating a failure-recovery job at the first computer system when the communication exhibits a first predefined fault condition, where the first predefined fault condition comprises the first computer system failing to receive within a predefined amount of time a response from a second computer system, and when the communication exhibits a second predefined fault condition, where the second predefined fault condition comprises sending a signal more than a predefined number of times to a second computer system without receiving a response (a timeout occurs and the client resends the request to the server, the server being determined to be inaccessible if more than a given number of retries was made; col. 4, lines 21-32). However the Hollaar invention does not explicitly teach sending a status signal from the first computer system to the second computer system when one of the predefined fault conditions exists. Fymier teaches a data communication process between a requester and a holder that involves checking for some predefined fault condition, a checksum error, and if found, an error message is sent from the holder to the requester (col. 19, lines 35-53. It would have been obvious to one of ordinary skill in the art at the

time of the invention to include sending an error message when a predefined fault occurs as taught by Fymier in the invention of Hollaar because the error message would inform the other computer of an error, allowing it to respond appropriately, as taught by Fymier (col. 19, lines 50-57).

However, the Hollaar invention modified by Fymier does not explicitly teach using the response signal from the second computer to modify the predefined fault condition. "Official Notice" is taken that both the concept and advantages of resetting a timeout counter when data is received is well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include resetting the timeout counter (modifying a definition of a predefined fault condition) when a signal is received in the Hollaar/Fymier invention in order to prevent inaccurate fault conditions occurring when a signal was actually received.

### ***Conclusion***

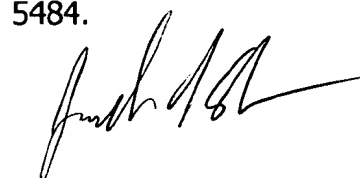
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Shaw whose telephone number is 703-305-0094. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 4:00 PM, and on alternate Fridays.



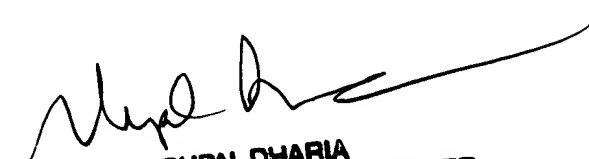
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5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 703-305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3718.

6. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5484.



JDS



**RUPAL DHARIA**  
**SUPERVISORY PATENT EXAMINER**